



Public Employees for Environmental Responsibility

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December 12, 2017

Via Email

Regional Freedom of Information Officer
U.S. EPA, Region 4
AFC Bldg, 61 Forsyth Street., S.W., 9th Flr (4PM/IF)
Atlanta, GA 30303-8960

RE: FOIA REQUEST—LUST Trust Grants to the Florida, Department of Environmental Protection for Calendar Years 2007 through 2017, and Lists of Facilities for Which LUST Trust Funding Was Appropriated

To whom it may concern:

Pursuant to the Freedom of Information Act, 5 U.S.C. 552, as amended, Public Employees for Environmental Responsibility (PEER) requests that the EPA (AGENCY) provide us with a copy of the following records:

1. Leaking Underground Storage Tank (LUST) grant monies requested by the State of Florida for calendar years 2007 through 2017, for the express purpose of assisting in the cleanup of contaminated petroleum sites in the State of Florida;
2. LUST grants issued to the State of Florida for calendar years 2007 through 2017;
3. Reports submitted to the EPA by the State of Florida concerning the manner in which the State of Florida spent LUST Trust Fund grant money for calendar years 2007 through 2017;
4. Any and all lists maintained by the EPA concerning all individual sites that are eligible for LUST grant money in the State of Florida; and
5. Any and all lists maintained by the EPA concerning the amount of money that has been distributed, together with the date(s) of distribution, to each of the sites covered under Item 2, above.

These monies have, on information and belief, been set aside for the cleanup of sites that have been contaminated by LUSTs. The monies have been held in the [LUST Trust Fund](#), itself a creation of the Solid Waste Disposal Act.

This request includes all documents that have ever been within your custody or control, whether they exist in agency “working,” investigative, retired, electronic mail, or other files currently or at any other time.

In a January 21, 2009 memo, President Barack Obama declared the following policy for the Executive Branch:

“The Freedom of Information Act should be administered with a clear presumption: In the face of doubt, openness prevails. The Government should not keep information confidential merely because public officials might be embarrassed by disclosure, because errors and failures might be revealed, or because of speculative or abstract fears. Nondisclosure should never be based on an effort to protect the personal interests of Government officials at the expense of those they are supposed to serve... All agencies should adopt a presumption in favor of disclosure, in order to renew their commitment to the principles embodied in FOIA, and to usher in a new era of open Government. The presumption of disclosure should be applied to all decisions involving FOIA.”

For any documents or portions of documents that you block release due to specific exemption(s) from the requirements of the Freedom of Information Act, please provide an index itemizing and describing the documents or portions of documents withheld. The index should, pursuant to the holding of Vaughn v. Rosen (484 F.2d 820 [D.C. Cir. 1973] cert. denied, 415 U.S. 977 [1974]), provide a detailed justification for claiming a particular exemption that explains why each such exemption applies to the document or portion of a document withheld.

To the extent that THE AGENCY needs to perform a detailed review, PEER requests that all fees be waived because “disclosure of the information is in the public interest . . . and is not primarily in the commercial interest of the requestor” (5 U.S.C. 552 (a) (4)(A)):

1. The subject matter of the requested records must specifically concern identifiable operations or activities of the government.

The FOIA request is, by its terms, limited to identifiable activities of THE AGENCY and its employees.

2. For the disclosure to be “likely to contribute” to the understanding of specific government operations or activities, the releasable material must be meaningfully informative in relation to the subject matter of the request.

The requested material consists of documents concerning Florida’s administration of LUST Trust Fund dollars under the Solid Waste Disposal Act (Act). Accordingly, these documents will assist

in understanding the manner in which Florida administers the money received under this program. Equally important, the documents are expected to show the extent to which EPA Region 4 reviews Florida's actions and demands strict compliance with the federal statutes with which Florida is obligated to comply.

3. The disclosure must contribute to the understanding of the public at large, as opposed to the understanding of the requestor or a narrow segment of interested persons.

The requested information concerns the federal role in appropriating LUST Trust Fund dollars, including the extent to which the EPA ensures that Florida is using these dollars in the manner for which they are intended. The LUST Trust Fund was created in 1986 to manage sites that were known to be contaminated through petroleum releases. Thus, this request concerns the impacts that Florida's actions, through the use of federal dollars, are having on the overall protection of the public's health, safety and welfare in the area of leaking underground storage tanks.

The general public has always had a keen interest in any factor bearing upon the contamination that can threaten the public's surface waters and/or ground water supplies. This is particularly true in states such as Florida, that have a karst topography that can serve to facilitate the movement of underground contaminants such as petroleum products. Consequently, an important issue is the extent to which the EPA is properly exercising its oversight responsibilities on the issue of Florida's administration of federal grant money that is meant to be used for the cleanup of sites known to be contaminated by these products.

PEER intends to provide the requested information to the general public through —

- Release to the news media;
- Posting on PEER's web page which draws between 1,000 and 10,000 viewers per day; and
- Publication in PEER's newsletter that has a circulation of approximately 20,000, including 1,500 environmental journalists.

As THE AGENCY well knows from past direct experience, PEER has a long track record of attracting media and public attention to the internal records of federal agencies. For example, In August 2016 we notified the public about numerous problems associated with the management of the National Park Service <http://www.peer.org/news/news-releases/national-park-service-left-with-centennial-hangover.html> and Florida PEER has reported on the EPA's failure to hold state officials accountable for blatant conflicts of interest that violated the Clean Water Act, e.g. <http://www.peer.org/news/news-releases/epa-drops-conflict-of-interest-probe-of-top-florida-officials.html>.

Moreover, PEER believes that THE AGENCY also maintains that this information is of interest to the general public. On its [website](#) THE AGENCY routinely updates the public about its efforts to ensure that contaminated sites are remediated.

4. The disclosure must contribute “significantly” to public understanding of government operations or activities.

While it is difficult to warrant in advance to seeing it just how significant the information will be to the general public, the nature of the information should shed some direct light on the extent to which THE AGENCY is meeting the requirements of the Underground Storage Tanks Program.

If, as we strongly suspect, the records show that the Florida’s actions in this matter (and by extension the EPA’s) have been deficient we will apprise the public of this fact so that the public can exercise greater vigilance in this and future projects in which THE AGENCY is involved.

5. The extent to which disclosure will serve the requestor’s commercial interest.

Disclosure is in no way connected with any commercial interest of the requestors in that PEER is a nonprofit, nonpartisan public interest organization concerned with upholding the public trust through responsible management of our nation’s resources and with supporting professional integrity within public land management and pollution control agencies. To that end, PEER is designated as a tax-exempt organization under section 501(c)(3) of the Internal Revenue Code.

6. The extent to which the identified public interest in the disclosure outweighs the requestor’s commercial interest.

As stated above, disclosure is in no way connected with any commercial interest of the requestors in that PEER is a nonprofit, nonpartisan public interest organization concerned with upholding the public trust through responsible management of our nation’s resources and with supporting professional integrity within public land management and pollution control agencies. To that end, PEER is designated as a tax-exempt organization under section 501 (c) (3) of the Internal Revenue code.

If you have any questions about this FOIA request, please contact me at (850) 277-8097. I look forward to receiving THE AGENCY’s final response within 20 working days.

Cordially,

/s/

Jerry Phillips
Director, *Florida* PEER